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Attorneys for Plaintiffs

**MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT,  
GALLATIN COUNTY**

THE RANCH HOMEOWNERS ASSOCIATION, a )  
Montana nonprofit corporation; BARNEY and )  
SHERYL HALLIN; CHARLES and LOUISE )  
FAVOR; ELIZABETH MCFARLAND; ROBERT and )  
CAROL BARBEE; JANE and GARY SCUDDER; )  
JOHN and JANE HODGES; ROBERT and LAURIE )  
ALLEN; RONALD GJESTSON; ERIC SCRANTON; )  
BOBBI GEISE; GEORGE GOLDSMITH; and )  
CATHERINE SORENSON, )

Plaintiffs and Petitioners, )

v. )

GALLATIN COUNTY, a Political Subdivision of the )  
State of Montana By and Through its Board of )  
County Commissioners; JOHN TUBBS, in his )  
official capacity as Director of Department of )  
Natural Resources and Conservation, an agency of )  
the State of Montana; THE MONTANA )  
DEPARTMENT OF NATURAL RESOURCES AND )  
CONSERVATION, an agency of the State of )  
Montana; TRACY STONE-MANNING, in her )  
official capacity as Director of the Montana )

GALLATIN COUNTY CLERK  
OF DISTRICT COURT  
JENNIFER LARSON

2014 MAR 4 PM 4 13

FILED

BY \_\_\_\_\_  
DEPUTY

Cause No. Dr-14-186A

**PETITION FOR JUDICIAL  
REVIEW PURSUANT TO § 76-  
3-625, MCA; COMPLAINT;  
AND  
DEMAND FOR JURY TRIAL**

Appeal Pursuant to Mont. Code Ann. § 76-3-625 and Complaint

WATER POLICY INTERIM  
COMMITTEE. 2013-14

11. Plaintiffs and Petitioners George Goldsmith and Catherine Sorenson own real property in The Ranch Subdivision, Gallatin County, Montana. George Goldsmith and Catherine Sorenson will suffer material injury to their real property and its value as a result of Defendants' actions.

12. Defendant and Respondent Gallatin County, by and through the Gallatin County Commission (the "Commission"), is a political subdivision of the State of Montana. Mont. Code Ann. § 2-9-101(5). It is the governing body of Gallatin County and is responsible, along with its Planning Department, for reviewing and approving preliminary plat applications for subdivision.

13. Defendant and Respondent John Tubbs in his official capacity is Director of the Montana Department of Natural Resources and Conservation ("DNRC"). He is responsible for overseeing and directing the implementation and enforcement of DNRC policies and rules.

14. Defendant and Respondent Montana Department of Natural Resources and Conservation is an agency of the State of Montana responsible for implementing and enforcing policy and rules regarding water rights and water quality in the State of Montana.

15. Defendant and Respondent Tracy Stone-Manning in her official capacity is Director of the Montana Department of Environmental Quality ("DEQ"). She is responsible for overseeing, directing, and enforcing the rules and policies of the DEQ.

16. Defendant and Respondent Montana Department of Environmental Quality is an agency of the State of Montana responsible for implementing and enforcing policy and rules regarding water usage and quality in the State of Montana.

## **STANDING/JURISDICTION/VENUE**

17. Plaintiffs/Petitioners are appealing the Gallatin County Commission's unlawful approval of the preliminary plat application for the Springhill Reserve Major Subdivision. Plaintiffs/Petitioners have standing pursuant to § 76-3-625, MCA.

18. The real property at issue is located in Gallatin County, Montana. Thus, venue and jurisdiction are proper in this Court. Mont. Code Ann. § 76-3-625(2).

19. The Commission approved the preliminary plat for the Springhill Reserve Major Subdivision on February 3, 2014. This appeal is timely filed within 30 days of the date of the written decision. Mont. Code Ann. § 76-3-625(2).

20. An agency rule may be declared invalid in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff. Mont. Code Ann. § 2-4-506(1). It is not necessary that the plaintiff first present the issue of the rule's validity to the agency. Mont. Code Ann. § 2-4-506(3). Venue is proper in the county where the plaintiff resides. Mont. Code Ann. § 2-4-506(4). The agency must be made a party to the action. *Id.*

## **GOVERNING LAW**

21. Gallatin County is required by law to adopt subdivision regulations "reasonably providing for . . . the provision of adequate transportation, water, and drainage." Mont. Code Ann. § 76-3-501(6). Subdivision regulation is intended to avoid "subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to . . . the lack of water . . . ." *Id.* at (9). Gallatin County has enacted subdivision regulations.

22. Local subdivision regulations must prescribe standards for water supply that meet the regulations adopted by the Montana Department of Environmental Quality under § 76-4-104 for subdivisions creating one or more parcels less than 20 acres in size. Mont. Code Ann. § 76-2-504(1)(g)(iii). The DEQ rules must provide for "adequate evidence that a water supply is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed." Mont. Code Ann. § 76-4-104(6)(b).

23. The Gallatin County Subdivision Regulations specifically state that they intend to comply with Title 76 of the Montana Code Annotated, and that one of the purposes of subdivision regulation is to provide for an adequate water supply. Gallatin County Subdivision Regulations at 1-2; Mont. Code Ann. § 76-3-102(4).

24. Title 85, chapter 2, parts 1 through 4 are referred to as the Montana Water Use Act. A.R.M. 36.12.101(1). One of the purposes of the Water Use Act is to implement Article IX, Section 3(4) of the Montana Constitution, which requires the legislature to provide for the administration, control, and regulation of water rights and to establish a system of centralized records of all water rights. Mont. Code Ann. § 85-2-101(2). "The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation, and future beneficial use and development of Montana's water for the state and its citizens and for the continued development and completion of the comprehensive state water plan." *Id.*

25. The Montana Legislature has provided for appropriations of groundwater that do not require a permit. "Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating ground water by means of a well . . . when the appropriation is outside a stream depletion zone, is 35 gallons per minute or less,

and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit." Mont. Code Ann. § 85-2-306(3)(a)(iii). These are commonly referred to as "exempt wells."

26. Water is "appropriated" when it is diverted, impounded, or withdrawn for a beneficial use. Mont. Code Ann. § 85-2-102(1)(a). Using water for domestic purposes is a beneficial use. Mont. Code Ann. § 85-2-102(4)(a).

27. Because the Springhill Reserve Major Subdivision application foresees the use of more than 10 acre-feet a year at less than 35 gallons per minute, it should be required to obtain a permit under Mont. Code Ann. § 85-2-306(3)(a)(iii). However, the Montana Department of Natural Resources has interpreted this statute so that the permit requirement is triggered only when the various appropriations within a subdivision are "physically manifold into the same system." A.R.M. 36.12.101(13). In other words, under DNRC's interpretation, 76 individual wells all drawing from the same aquifer will never trigger the need for an appropriation permit unless they are physically connected to one another.

## **FACTS**

28. All the Paragraphs 1 through 27 are incorporated herein.

29. The Hallins' domestic water comes from an individual well. All lots in the Ranch Subdivision use individual wells for their domestic water. Since 1991, the water level for the Hallins' well has dropped by approximately ten feet.

30. Plaintiffs Eric Scranton and Bobbi Geise have also experienced a notable drop in their well's water level. In 1985, when their well was drilled, the water level was at approximately 170 feet below the surface. In 2005, the well's water level had dropped

over thirty feet to approximately 210 feet below the surface. This drop in water level directly coincided with the increasing number of wells in the immediate vicinity as a result of neighboring development.

31. The Ranch Subdivision is at a higher elevation than the proposed Springhill Reserve Major Subdivision, which sits at the bottom of the alluvial bench. Seventy-four of the 76 proposed lots in the Springhill Reserve subdivision sit on the alluvial bench. Thus, all of the lots in the proposed subdivision are closer to the aquifer than are the lots in the Ranch Subdivision.

32. The Hallins' property, other RHA members' properties, and the proposed Springhill Reserve Major Subdivision are all within the Upper Missouri River Basin, a legislatively closed basin. See Mont. Code Ann. § 85-2-343.

33. At the time the Commission approved the preliminary plat, the proposed Springhill Reserve Major Subdivision was being developed by 360 Capital Partners, LLC, Quantum Holdings, LLC, and 3B, LLC. Since that time, based on information and belief, one or more of these entities has sold its interest in the development. It is Plaintiffs'/Petitioners' belief that the proposed Springhill Reserve Major Subdivision is now being developed by Four Corners Construction, LLC and Joint Venture, LLC. Any entities that were or currently are developing the Springhill Reserve Major Subdivision are collectively referred to as the "Springhill Reserve Subdividers."

34. The Springhill Reserve Subdividers propose to develop 193.76 acres of land located in the Southeast ¼ of the Southeast ¼ of Section 14, and a portion of the Southwest ¼ of Section 13, Township 1 South, Range 5 East, P.M.M, Gallatin County, Montana. In general, the property is located on the east side of Springhill Road, approximately 1.75 miles north of the I-90 frontage road.

35. The Springhill Reserve Subdividers propose to create a total of 76 low-density single-family residential lots, and five open-space parcels totaling 47 acres.

36. The 76 lots within the proposed Springhill Reserve Major Subdivision will be served by individual wells. The Springhill Reserve Major Subdivision will have additional wells for fire protection.

37. The Subdividers relied on a September 2013 report titled: "Preliminary Evaluation of Groundwater Availability," for their finding that the proposed subdivision would have adequate water resources (the "Groundwater Availability Report"). According to the Groundwater Availability Report, the proposed subdivision will use 87.74 acre-feet of water per year and existing wells in the area produce an average of 23 gallons per minute. However, this average appears to be high and not reflective of the median gallons per minute that wells in the area produce. Many of the wells in the data log used to calculate the 23 gallon per minute average cannot be found on the corresponding map the Subdividers provided depicting the location of the wells used to reach the average. Thus, it is unclear of the location of some of the wells used to calculate the 23 gallons per minute, or if such wells are even in the vicinity of the proposed subdivision.

38. The Gallatin County Commission, after providing notice, held a public hearing to consider the Springhill Reserve Subdividers' request for preliminary plat approval of the Springhill Reserve Major Subdivision. The public hearing was held on January 28, 2014 with the purpose of determining whether the information provided on the preliminary plat application complied with the Gallatin County Growth Policy, the Gallatin County Bozeman Area Plan, the requirements of the Subdivision Regulations, and the Montana Subdivision and Platting Act.

39. The Commission reviewed information from 1) the Planning Department Staff Report with Exhibits, 2) the Springhill Reserve Subdividers' complete submittal, and 3) written public testimony submitted by concerned community members, including Plaintiffs/Petitioners to this action.

40. The Barney and Sheryl Hallin submitted a four-page letter to the Commission before the public hearing that, among other things, questioned the impact of 76 new wells on existing water users, and identified foreseeable problems with existing traffic infrastructure.

41. There were two letters of concurrence to Barney and Sheryl Hallin's letter, which were signed by approximately fifty residents in the immediate vicinity of the proposed Springhill Reserve Major Subdivision and submitted to the Commission for consideration.

42. Additional landowners submitted written documents to the Commission addressing many of the same concerns as expressed by the Hallins. Specifically, Plaintiffs John and Jane Hodges, Bobbie Geise, and Eric Scranton wrote letters to the Commission expressing concern over water and traffic issues related to the proposed subdivision.

43. The proposed subdivision lies within the Sypes Canyon area. The Hallins submitted as evidence of potentially significant adverse impact on existing water users a 2007 DNRC report, *Ground Water Conditions at the Sypes Canyon Temporary Controlled Ground Water Area*, which included the following findings on the effects of increased withdrawals by future developments in the Sypes Canyon area:

- a. Continued development at the existing density and at depths similar to existing wells could lower water levels up to 20 feet in some existing wells;



- b. Pumping from wells at depths greater than depths of existing wells could reduce the effects relative to pumping from shallower depths because of the semi-confined nature of the aquifer system;
- c. Pumping from individual wells at greater than existing densities would result in proportionally greater drawdown; and
- d. Extended drought could reduce ground-water levels in the area up to 30 feet.

44. The Ranch Subdivision was developed in the early 1980's. Several other subdivisions are also in the immediate vicinity of the proposed subdivision. Grandview Heights Subdivision, Wheatland Hills Subdivision, and Harvest Hills Subdivision were all developed prior to the Ranch Subdivision, while Spirit Hills Subdivision and Summer Ridge Subdivision were both developed after the Ranch Subdivision.

45. All of the above named subdivisions are in close proximity to the proposed Springhill Reserve Major Subdivision. With the exception of Spirit Hills Subdivision, all of the named subdivisions use individual wells as their water source. The Spirit Hills Subdivision uses a community well system, which consists of permitted wells regulated by the Montana Department of Environmental Quality ("DEQ") and the Montana Department of Natural Resources and Conservation ("DNRC").

46. The most recently constructed subdivisions in the vicinity are the Summer Ridge Subdivision, developed in or about 1993, and the Spirit Hills Subdivision, developed in or about 1999. Because of concerns about the availability of water and how new exempt wells would affect existing water users, the DEQ required the Summer Ridge Subdivision and the Spirit Hills Subdivision to put restrictions on their water usage, which bind property owners through restrictive covenants. DEQ restricts Summer Ridge to a maximum water usage of 58,000 gallons per month per lot, and irrigated areas within the subdivision cannot exceed 12,000 square feet per lot.

Additionally, DEQ required water level monitors to be put on six wells in the Summer Ridge Subdivision, and all wells in the subdivision must have a water consumption meter with water reports submitted to the DEQ on a monthly basis. DEQ can further restrict water usage in the subdivision if a water shortage occurs or if other circumstances change.

47. DEQ placed similar restrictions on the Spirit Hills Subdivision by limiting water usage to 58,000 gallons per month per lot and limiting the irrigated area per lot to 8,000 square feet.

48. The Commission did not consider placing these types of restrictions on the Springhill Reserve Major Subdivision, nor request that DEQ do so.

49. In its approval of the preliminary plat, the Commission relied entirely on the Groundwater Availability Report, prepared by the Springhill Subdividers, to conclude that the Subdividers provided sufficient evidence of adequate groundwater resources for the proposed subdivision.

50. The Groundwater Availability Report failed to adequately consider concerns raised in the 2007 DNRC report, which were highlighted by the Hallins, on how additional wells might affect neighboring property owners. The report cherry-picked favorable DNRC findings to support its conclusion that there was adequate groundwater for the proposed subdivision.

51. The Groundwater Availability Report was completed in September 2013, prior to significant revisions of the Montana exempt well permitting statutes that went into effect on October 1, 2013. See Senate Bill 346 and Mont. Code Ann. § 85-2-306 (2013).

52. The Groundwater Availability Report does not state whether the proposed Springhill Reserve Major Subdivision is located inside or outside of a stream depletion zone, as contemplated by Mont. Code Ann. § 85-2-306. Neither the report nor the Commission's findings and conclusions determine whether the proposed subdivision's 76 wells constitute a combined appropriation pursuant to Mont. Code Ann. § 85-2-306.

53. In their letters submitted to the Commission before the public hearing, several of the Plaintiffs/Petitioners raised substantial concerns regarding traffic and access to the proposed subdivision. Among other things, the Hallins raised safety concerns with key intersections on Tumbleweed Drive, Summer Ridge Road, and Summer Cutoff Road. The Springhill Reserve Subdividers failed to do traffic studies on these crucial intersections to determine the impact the proposed subdivision would have on these roads and intersections.

54. At the public hearing, several of the Plaintiffs/Petitioners raised issues regarding the effects the proposed subdivision would have on Springhill Road. Springhill Road is listed by Gallatin County as a minor arterial road and is the only route from the vicinity of the proposed subdivision into Bozeman. The Subdividers used data from a previously conducted Montana Department of Transportation traffic impact study to conclude that the Springhill Reserve Major Subdivision would only have a minor impact to the area transportation system. However, the Subdividers did not conduct any independent studies that were directly related to the additional traffic that will be created as a result of the proposed subdivision. These concerns raised by the Plaintiffs regarding Springhill Road were not considered or addressed by the Commission.

55. In their letter to the Commission, the Hallins discussed an unlicensed gravel pit in the open space on the southeast side of the proposed subdivision adjacent to the Sypes Canyon Road. The Springhill Reserve Subdividers propose construction of a trail that runs along the rim of the gravel pit. The rim of the gravel pit has a nearly vertical twenty-five foot drop to the bottom of the gravel pit. The Hallins expressed concern that this vertical drop would be a hazard, not only for the residents of the proposed subdivision, but also for the residents of the neighboring subdivisions who might use the trail. Especially concerning is the danger this vertical drop poses to the children living in the area.

#### **COUNT I – APPEAL UNDER MONT. CODE ANN. § 76-3-625**

56. Paragraphs 1 through 55 are incorporated herein.

57. One of the explicit purposes of subdivision regulation is to provide for an adequate water supply. Gallatin County Subdivision Regulations at 1-2; Mont. Code Ann. § 76-3-102(4).

58. The Commission failed to consider whether 76 new exempt wells in the proposed Springhill Reserve Major Subdivision would affect the ability of existing water users to access sufficient water in the future.

59. The Commission failed to place restrictions on water usage in the proposed subdivision similar to the usage restrictions currently in place for Summer Ridge Subdivision and the Spirit Hills Subdivision, and failed to request that DEQ consider placing such restrictions on the Springhill Reserve subdivision.

60. The Commission failed to consider Gallatin County Growth Policy Section 3.2 – Water Quantity: Goal 1, which requires new developers to show a “rational plan to maintain and protect flows for existing water rights of others.”

61. The Commission acted in an arbitrary and capricious manner by approving the preliminary plat without considering whether the approval would have a detrimental effect on the Plaintiffs'/Petitioners' access to water.

62. The Commission approved the preliminary plat without considering the objections of Plaintiffs Barney and Sheryl Hallin or the objections other concerned community members raised in their letters to the commission and at the public hearing.

63. The Commission failed to consider or address the evidence provided by the Hallins or other concerned community members regarding traffic and related safety concerns.

64. The Commission approved the preliminary plat without conducting the appropriate traffic studies. The proposed subdivision will cause traffic to ingress and egress to the subdivision through the Summer Cutoff Road and Tumbleweed Drive four-way intersection. The Springhill Reserve Subdividers did not conduct a traffic study on the impact the proposed subdivision will have on this intersection or the impact the proposed subdivision will have on these roads. As a result, there are serious questions of safety for new residents in the proposed intersection as well as the current residents in The Ranch subdivision. Approving the preliminary plat without conducting the appropriate traffic studies was arbitrary and capricious.

65. The Commission failed to address the potential hazard of the unlicensed gravel pit, or place restrictions on the development of a trail next to the 25-foot vertical drop into the pit. Approving the preliminary plat without considering this hazard was arbitrary and capricious.

66. The Commission's preliminary plat approval will cause material injury to Plaintiffs'/Petitioners' property.

67. The Commission's decision to grant preliminary plat approval for the Springhill Reserve Major Subdivision was arbitrary and capricious or otherwise not in accordance with Montana law.

**COUNT II – VIOLATION OF MONT. CODE ANN. § 85-2-306**

68. Paragraphs 1 through 55 are incorporated herein.

69. The Commission did not assess whether the proposed appropriation by the Springhill Reserve Major Subdivision's 76 wells will comply with § 85-2-306, MCA. Because the total appropriation exceeds the parameters for exempt wells established by the Montana Legislature, the preliminary plat for the Springhill Reserve Major Subdivision should not have been approved without requiring a permit for appropriating groundwater.

70. DEQ is obligated to assess whether the proposed appropriation by the Springhill Reserve Major Subdivision's 76 wells will comply with § 85-2-306, MCA. Because the total appropriation exceeds the parameters for exempt wells established by the Montana Legislature, DEQ should not approve any wells for the subdivision without requiring a permit for appropriating groundwater.

71. To the extent the Commission or DEQ relied on the DNRC's interpretation of "combined appropriation" in A.R.M. 36.12.101(13), such reliance is arbitrary and capricious and not in accordance with the law.

**COUNT III – VIOLATION OF CONSTITUTIONAL RIGHT TO CLEAN AND HEALTHFUL ENVIRONMENT**

72. Paragraphs 1 through 55 are incorporated herein.

73. The Commission's approval of the Springhill Reserve Major Subdivision's preliminary plat ignored potential impacts to the environment, which include but are

not limited to impacts on water quality, water quantity, adjoining property and wells, and other surface and ground water quality.

74. The data on which the Commission relied in making its decision was incomplete, inaccurate, or not given appropriate consideration, and prevented the Commission from accurately addressing the preliminary plat application's impacts on the natural environment.

75. Gallatin County has adopted the Gallatin County Growth Policy, which guides the Commission in making determinations related to residents' right to a clean and healthful environment. The Commission failed to consider the stated goals and policies of the Gallatin County Growth Policy related to water quality and quantity in its approval of the Springhill Reserve Major Subdivision's preliminary plat.

76. The Commission's approval of the preliminary plat was arbitrary and capricious, and infringes on Plaintiffs' constitutional rights to a healthy and clean environment.

77. The Commission's approval of the Springhill Reserve Major Subdivision preliminary plat was unlawful and caused damage to Plaintiffs in an amount to be determined at trial.

#### **COUNT IV – INVALID AND INCONSISTENT WRITTEN FINDINGS OF FACT**

78. Paragraphs 1 through 55 are incorporated herein.

79. The Commission is required to prepare written findings of its decision to grant preliminary plat approval.

80. The Commission issued Findings of Fact, Conclusions of Law, and Order approving the Springhill Reserve Major Subdivision preliminary plat on February 3, 2013.

81. The Findings of Fact do not adequately reflect or incorporate the public testimony and submitted documentation at the January 28, 2013 hearing, including public comment and documentation regarding the proposed subdivision's effect on water availability, the natural environment, and public health and safety.

82. The Findings of Fact do not address inconsistent and contradictory information presented in the preliminary plat application.

83. Because the Findings of Fact do not conform to the public testimony and submitted documentation and Commission discussion held at the January 28, 2013 hearing, they are invalid, inadequate, and incomplete under Montana law.

#### **COUNT V (DNRC) – VIOLATION OF THE MONTANA WATER USE ACT**

84. Paragraphs 1 through 55 are incorporated herein.

85. The Montana Legislature enacted the Montana Water Use Act, which provides that "a combined appropriation from the same source by two or more wells . . . exceeding 10 acre-feet a year, regardless of the flow rate, requires a permit." Mont. Code Ann. § 85-2-306(3)(a)(iii). The 76 wells that comprise the Springhill Reserve Major Subdivision appropriation will draw from the same source and use 87.74 acre-feet of water a year, far exceeding the 10 acre-feet a year limit established by the Montana Legislature. Thus, under the statute, the Springhill Reserve Subdividers must obtain a permit.

86. The Montana DNRC has interpreted "combined appropriation" to apply only to wells that are physically connected to one another. A.R.M. 36.12.101(13). Individual residential wells are not physically connected to one another. Thus, under the DNRC's interpretation, the Springhill Reserve Subdividers do not have to obtain a



permit and the appropriation for the Springhill Reserve subdivision is exempt from any oversight or regulation.

87. The DNRC's interpretation of "combined appropriation" at A.R.M. 36.12.101(13) is contrary to the governing statute, and therefore arbitrary, capricious, or otherwise not in accordance with the law.

88. The application of the DNRC's rule to the Springhill Reserve subdivision threatens to impair Plaintiffs' existing wells and diminish their access to water for use in their homes.

WHEREFORE, Plaintiffs/Petitioners pray for relief against the Defendants/Respondents as follows:

- A. That the Commission's decision approving the Springhill Reserve Subdividers' preliminary plat application be held arbitrary, capricious, and otherwise unlawful;
- B. That the preliminary plat application for Springhill Reserve Major Subdivision be remanded to the Commission with instructions to:
  - a. Consider the impact of the 76 new wells on the Plaintiffs water availability;
  - b. Conduct adequate traffic studies; and
  - c. Mitigate the hazard of a trail along the rim of the unlicensed gravel pit;
- C. That the DNRC's interpretation of "combined appropriation," A.R.M. 36.12.101(13), be declared to be inconsistent with the governing statute, in excess of the agency's authority, and therefore void;
- D. That this Court issue an injunction suspending applicability of A.R.M. 36.12.101(13);

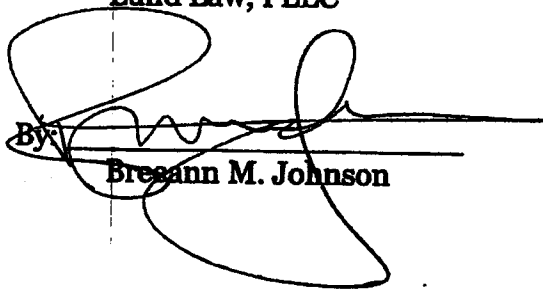
- E. That the Plaintiffs be awarded all available damages in an amount to be determined at trial;
- F. For reasonable attorney fees, costs and disbursements incurred herein; and
- G. For such other and further relief that this court deems just and equitable.

**DEMAND FOR A JURY TRIAL**

Plaintiff requests a jury trial on all issues triable by a jury.

DATED this 4<sup>th</sup> day of March, 2014.

Lund Law, PLLC

By   
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Attorneys for Plaintiffs

**MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT,  
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Montana nonprofit corporation; BARNEY HALLIN )  
AND SHERYL HALLIN, )

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the State of Montana; THE MONTANA )  
DEPARTMENT OF NATURAL RESOURCES AND )  
CONSERVATION, an agency of the State of )  
Montana; TRACY STONE-MANNING, in her official )  
capacity as Director of the Montana Department of )  
Environmental Quality, an Agency of the State of )  
Montana; and THE MONTANA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, an agency of the )  
State of Montana. )

Defendants. )

**NOTICE OF A LAWSUIT AND REQUEST TO  
ACKNOWLEDGE AND WAIVE SERVICE OF A SUMMONS**

TO: Tim Fox, in Your Capacity as  
The Attorney General for the State of Montana  
On Behalf of John Tubbs, in His Official Capacity as Director of  
Montana Department of Natural Resources and Conservation  
P.O. Box 201401  
Helena, MT 59620-1401

**Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this Court under the cause number shown above. A copy of the Complaint is attached.

This is not a summons, or an official notice from the Court. It is a request that, to avoid expenses, you acknowledge and waive formal service of a summons by signing and returning the enclosed acknowledgment and waiver within 21 days (42 days if you are the State of Montana, a state agency, or a state officer or employee) from the date shown below, which is the date this notice was sent. The copies of the acknowledgment and waiver are enclosed, along with a stamped, self-addressed envelope, or other prepaid means for returning one copy. You may keep the other copy.

**What happens next?**

If you return the signed acknowledgment and waiver, I will file it with the Court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 21 days from the date you sign the acknowledgment and waiver (42 days if you are the State of Montana, a state agency, or a state officer or employee sued in an official capacity) to answer the Complaint.

If you do not return the signed acknowledgment and waiver within the time indicated, I will arrange to have the summons and Complaint served on you, and I will ask the Court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

DATED this 5<sup>th</sup> day of March, 2014.

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Attorneys for Plaintiffs

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Environmental Quality, an Agency of the State of  
Montana; and THE MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY, an agency of the  
State of Montana.

Defendants.

**NOTICE OF A LAWSUIT AND REQUEST TO  
ACKNOWLEDGE AND WAIVE SERVICE OF A SUMMONS**

TO: Tim Fox, in Your Capacity as  
The Attorney General for the State of Montana  
On Behalf of John Tubbs, in His Official Capacity as Director of  
Montana Department of Natural Resources and Conservation  
P.O. Box 201401  
Helena, MT 59620-1401

**Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this Court under the cause number shown above. A copy of the Complaint is attached.

This is not a summons, or an official notice from the Court. It is a request that, to avoid expenses, you acknowledge and waive formal service of a summons by signing and returning the enclosed acknowledgment and waiver within 21 days (42 days if you are the State of Montana, a state agency, or a state officer or employee) from the date shown below, which is the date this notice was sent. The copies of the acknowledgment and waiver are enclosed, along with a stamped, self-addressed envelope, or other prepaid means for returning one copy. You may keep the other copy.

**What happens next?**

If you return the signed acknowledgment and waiver, I will file it with the Court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 21 days from the date you sign the acknowledgment and waiver (42 days if you are the State of Montana, a state agency, or a state officer or employee sued in an official capacity) to answer the Complaint.

If you do not return the signed acknowledgment and waiver within the time indicated, I will arrange to have the summons and Complaint served on you, and I will ask the Court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

DATED this 5<sup>th</sup> day of March, 2014.

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Hertha L. Lund  
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